IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2932 OF 2006

Pandurang Rajaram Karle ..Petitioner.
Vs.
The Chairman,
Mumbai Port Trust & Ors. ..Respondents.

...

Mr. Jaiprakash Sawant for the Petitioner.
Mr. R.S. Pai with Mr. N. Mouje i/b Mulla & Mulla & C. B. & C. for Respondent No.1.

....

CORAM: DR. D.Y. CHANDRACHUD, J.

6th December, 2006.

P.C. :

Both the Controlling authority and, in appeal, the Appellate authority under the Payment of Gratuity Act, 1972 have come to the conclusion that the gratuity that was due and payable to the Petitioner was correctly calculated and that the Petitioner was not entitled to any further relief. The Petitioner was employed as a Shed Superintendent at the time of his retirement. By a settlement dated 2nd February, 1974 incentives were provided for piece rated employees and among them in clause (2)(II)(b) is the Shed Superintendent of the Port Trust. There was similarly a

further settlement dated 20th February, 1979 between the Dock Workers' Union and the Port Trust under which the post of Shed Superintendent was qualified for incentive payments at the rate of 50% of the average piece rate earnings. The controlling authority has noted that for a period of over 20 years and more, the Petitioner received the benefit of the incentive payment that was applicable to piece rated workers. The first proviso to sub section (1) of Section 4 of the Payment of Gratuity Act lays down that in the case of a piece rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and for this purpose, the wages paid for overtime work shall not be taken into account. Both the authorities have held that the gratuity was duly calculated in accordance with the aforesaid provision. No case is made out under Article 226. The Petition is dismissed.